IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 477 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAGDISH TEXTILE DYEING & PRINTING INDUSTRIES - Appellant(s)
Versus
HB VORA & CO & 5 - Defendant(s)

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Appearance :
(MR MJ TRIVEDI) for Appellant(s) : 1,
RULE SERVED for Defendant(s) : 1 - 6.
MR BR SHAH for Defendant(s) : 1 - 6.
- for Defendant(s) : 0.0.0

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 29/08/2006

ORAL JUDGMENT

1. Though served, nobody appears on behalf of the appellant and this being an appeal of 1983, it is decided ex parte against the appellant.

2. By way of the present appeal, the appellant herein – original plaintiff has challenged the judgment and decree passed by the learned City Civil Court at Ahmedabad dated 28-2-1983 in Regular Civil Suit No.6 of 1982 in dismissing the said suit.

3. The original plaintiff filed the aforesaid civil suit in the learned City Civil Court at Ahmedabad against the defendants for the relief in respect of the infringement of a copy right as well as an infringement of a trade mark and for the compensation for a passing off action. It was further averred in the plaint that the plaintiff is a registered partnership firm under the name and style of M/s Jagdish Textile and Dyeing Industries, Jetpur, who is involved in the business of manufacturing and marketing of sarees and dress materials. It was further averred in the plaint that they have prepared an artistic piece of work to be utilized as a trade mark for the trade, the work 'J' and the word 'Jagdish'. It was therefore their case that they are the owners of copy right and also the trade mark. It was further averred in the plaint that the aforesaid trade mark was being affixed on the hoardings, boards, name plates, letter heads since the year, 1949 and on account

of the high standard, their goods have attained a popularity and a wide publicity is also made by the advertisement. It was submitted by them that they have a proprietary right over the trade mark. It was further averred in the plaint that the plaintiff company has a retail shop at Rajkot and they are trading in the name of their trade mark in retail business also in Rajkot. It was alleged by the plaintiff that the defendants have started a business in the name of Jagdish Collection at Rajkot and they have deliberately and with an intention to pass off the goods under the name and trade reputation of the plaintiff, selected the word “Jagdish” and they have thereby infringed the trade mark. It was further alleged that they are also guilty in the infringement of the copy right and are injuring the trade of the plaintiff. That they were getting unlawful advantage of the trade reputation of the plaintiff by adopting the said name and therefore, the plaintiff prayed for the decree of injunction in a perpetual nature restraining the defendants from using name “Jagdish” and/or any other name, which is identical or deceptively similar with the name of the plaintiff firm in the course of the trade. Further consequential reliefs were also sought by the plaintiff. The suit was resisted by the defendant Nos.

1,4 and 6 by filing written statement at Exh-26. Written statement was filed by defendant No.2 vide Exh-21, by defendant No.3 vide Exh-13 and by defendant No.5 vide Exh-22. They have denied the allegation levelled in the suit. Defendant Nos.1,2 and 3 took a stand that they have no concern with the business of “Jagdish Collection” andn they are unnecessary parties and are wrongly involved. Relying upon the invitation card issued for the opening ceremony (Exh-40), it was the case on behalf of defendant Nos.1,2 and 3 that they were simply well wishers of the firm which exists in the name of Jagdish Collection, wherein original defendant Nos.4,5 and 6 and one Lilavati Babubhai are the partners. It was the contention on behalf of the defendants that the firm had selected the name “Jagdish” after the conference with their astrological consultant and selected the name of “Jagdish” for the reason that the aforesaid consultant advised them to select the name commencing with the letter “Kh” or “J”. It was further submitted by the defendants that the partners in the business are all Brahmins with faith in God and as the name of “Jagdish” is a significant name connected with the religious feelings of Hindus and also the name of a God and also further that one of the brothers of defendant No.6 has

own name as “Jagdish”, which is considered to be lucky figure in their family, the name “Jagdish” has been selected. They specifically denied the allegations with regard to infringement of any trade mark and/or passing off. Therefore, it was requested to dismissed the present appeal.

4. The learned trial Court raised the issues at Exh-26. The original plaintiff examined its Chief Accountant at Exh-27 and its Manager at Exh-41. After considering the documentary as well as oral evidence, the learned trial Court dismissed the suit by holding that the plaintiff has failed to prove that the defendants have infringed the trade mark right of the plaintiff. The learned trial Court also further held that the plaintiff has not adduced cogent, reliable and sufficient evidence on record to establish that the plaintiff has ever attempted to pass of any goods under the name of “Jagdish Prints” or by interfering the rights of the plaintiff. The learned trial Court also further held that even the suit is bad for non-joinder of proper parties i.e. all the partners. Being aggrieved and dissatisfied with the judgment and decree passed by the learned trial Court, the appellant herein has preferred the present appeal.

5. Heard Shri Viral Dave, learned advocate appearing on behalf of the respondent No.6 – original defendant No.6. He has taken the Court to the findings of the learned trial Court as well as relevant documentary evidence. Relying upon the same, it is submitted by him that the learned trial Court has rightly held the issues in favour of the defendants and has rightly dismissed the suit. On going through the relevant discussion with regard to issue No.5 and other issues, more particularly issue No.5 and the finding that the plaintiff has not adduced cogent, reliable and sufficient evidence on record to establish that the defendants have ever attempted to pass of any goods under the name of “Jagdish Prints” or by interfering the rights of the plaintiff and the other documentary evidence, it cannot be said that the learned trial Court has committed any error in dismissing the suit. This Court is in complete agreement with the reasoning and finding of the learned trial Court in dismissing the suit.

6. For the reasons as stated above, the appeal fails and is dismissed accordingly. No costs. Ad interim relief if any, stands vacated forthwith.

(M.R.SHAH,J.)

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